



Gray Davis
GOVERNOR

State of California

A GUIDE TO THE LAFCO PROCESS FOR INCORPORATIONS

Governor's Office of Planning and Research

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LAFCO Incorporation Guidelines

Prepared for:

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I. INTRODUCTION

This section provides the background to the development of the Incorporation Guidelines, an explanation of their purposes and information about the overall structure and use of this document.

A. BACKGROUND OF INCORPORATION GUIDELINES

On September 26, 2000, Governor Gray Davis signed into law AB 2838 (Chapter 761, Statutes of 2000), authored by Assembly Speaker Robert M. Hertzberg. This legislation, titled the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and codified as California Government Code Sections 56000 et seq, marked the most significant reform to local government reorganization law since the 1963 statute that created Local Agency Formation Commissions (LAFCOs) in each county.

The legislation resulted from the recommendations of the Commission on Local Governance for the 21st Century, created by 1997 legislation. The Commission's recommendations were included in its final report, *Growth Within Bounds*, issued on January 20, 2000.

Pursuant to the new requirements in Government Code Section [56815.2](#), the Governor's Office of Planning and Research (OPR) was required to convene a task force composed of representatives of cities, counties, special districts, and local agency formation commissions for the purpose of creating statewide guidelines for the incorporation process. The purpose of the guidelines is to serve as advisory to LAFCOs in reviewing incorporation proposals.

Existing law further specifies that the guidelines serve as minimum statewide guidelines for the incorporation process. LAFCO may adopt supplemental policies and procedures which further the purposes of but which are not in conflict with the Incorporation Guidelines.

The guidelines are required to include:

- Information to assist incorporation proponents to understand the incorporation process, its timelines, and likely costs.
- Provide direction to affected agencies regarding the type of information that should be included in the comprehensive fiscal analysis of incorporation, as well as suggestions for alternative ways to achieve fiscally neutral incorporations.

These guidelines were published in January of 2002 and reflect the Cortese-Knox-Hertzberg Act and related laws as were in effect on that date. Since state law may be amended periodically, it is critical that users of these Guidelines consult with the State of California, OPR, LAFCO staff and/or legal counsel to ensure that they are aware of the latest amendments to the relevant

Government Code sections. In addition, each LAFCO may have policies, procedures and regulations which should be consulted before starting any incorporation effort.

B. PURPOSES OF THE INCORPORATION GUIDELINES

The Incorporation Guidelines are permissive and intended to be used as a framework for the consistent processing of incorporation proposals by LAFCOs, by other affected local governments and by proponents. They are intended to serve as the minimum statewide guidelines for the incorporation process. The Guidelines are advisory to LAFCOs in the review of incorporation proposals (§56815.2) and are consistent with the existing Government Code.

C. HOW TO USE THE INCORPORATION GUIDELINES

The Incorporation Guidelines are available in hard copy (paper), CD-ROM and PDF format. The PDF and CD-ROM versions contain electronic links to the appropriate California Government Code sections. Clicking on the links will move the user to the appropriate section of the Government Code. The Guidelines are organized in the following manner.

Section I contains the Introduction including information about the background, purposes and use of the Incorporation Guidelines.

Sections II through IX contain a step-by-step process for processing an incorporation proposal. It is advised that users of these Guidelines read the entire document first to gain an understanding of all the steps in incorporation. Government Code sections are included in parentheses so that readers can refer directly to the appropriate section of the law. Templates, exhibits and sample forms are provided where appropriate.

Section X contains a brief discussion of the responsibilities of a new city immediately following incorporation. While LAFCO's involvement in incorporation generally ends soon after a successful election, this section has been included to assist newly incorporated cities in making a transition to full municipal status. However, new cities should rely on their legal counsel and staff for more complete and updated information.

The Appendices (Section XI) contain sample forms and notices, a Primer for Incorporations and an initial fiscal feasibility review spreadsheet, which can be used by proponents to conduct a preliminary fiscal review of the proposed incorporation. If the initial fiscal feasibility review indicates potential problems, incorporation proponents can use that information as a basis for future decisions. The initial fiscal feasibility review spreadsheet can be used for a one-year budget but is not a substitute for a LAFCO application or a comprehensive fiscal analysis (CFA).

II. GETTING READY: PRE-INITIATION

The work of research and planning before initiating an incorporation is critical to the process. The following sections include a discussion of pre-initiation steps for LAFCO and incorporation proponents.

A. BEFORE INCORPORATION STARTS: LAFCO PREPARATION

In order to ensure a fair and equitable deliberation by LAFCO on incorporation proposals it is important that LAFCO adopt policies and procedures prior to the submittal of an incorporation proposal. At a minimum, LAFCO should take a comprehensive view of its existing rules related to incorporations, determine whether modifications are warranted and make the information available to the LAFCO Commission, local governments and the public.

The public, in particular, should have access to comprehensive information on the incorporation process, application forms, requirements, processing times, fee schedules, standards of review for incorporations and other relevant information.

LAFCO plays several roles in the incorporation process including educating the public on the incorporation process, facilitating communication between affected local government parties and community groups and reviewing/approving the proposal. When developing incorporation policies and procedures LAFCO should address each of these roles.

It is recommended that LAFCOs consider developing a formal pre-application process to ensure that community members have an opportunity to be better educated on the process and form an efficient working relationship with LAFCO.

At a minimum the pre-application process should include the following procedures:

- An internal tracking system to maintain updated information on changes in incorporation law, contacts with potential incorporation groups/individuals and a mailing list of potential incorporation proponents.
- Development of an information packet on the incorporation process and procedures which LAFCO will follow in reviewing the proposal.
- A meeting and consultation among incorporation proponents, LAFCO and affected local agencies to clarify expectations of the incorporation process.

What is a Logical Incorporation Boundary?

- Recognizes existing jurisdictional boundaries of other agencies.
- Is realistic in its recognition of political opportunities and constraints.
- Includes a variety of land uses for a balance community. While LAFCO has no direct authority to set or alter existing land use patterns, a proposed new city should have a variety of land uses for fiscal balance.
- Considers topography, geography and historic boundaries.
- Is simple – parcels should not be split by city boundaries.
- Does not create islands which are unincorporated areas surrounded by incorporated territory. LAFCO is prohibited by law from creating islands.
- Recognizes existing spheres of influence (SOI).
- Recognizes communities of interest or areas which may have financial, geographic or other various links to the incorporation area.
- Is consistent with the stated goals of incorporation. If the goal of incorporation is to give an area control over land use decisions, then the boundary should include areas which might have an impact on land use decisions.

B. BEFORE INCORPORATION STARTS: PROPONENTS

1. Consult with LAFCO

Of all the actions incorporation proponents can take to help ensure a successful incorporation process, early and frequent consultation with LAFCO is the most important. Proponents can often become overwhelmed by the technical, legal and procedural requirements of incorporation. LAFCO staff should be available to assist in understanding the process, in facilitating communication among all the affected agencies and in helping all parties avoid the most common pitfalls in an incorporation.

Developing a logical incorporation boundary is the first and most fundamental step in an incorporation effort. It is strongly recommended that proponents develop the boundary in conjunction with LAFCO staff early in the process—even before deciding to move forward with any incorporation efforts. Developing logical boundaries and alternatives early in the process with LAFCO staff can save time and money for proponents.

LAFCO's policies and procedures on incorporations should include a list of criteria which the LAFCO will use in evaluating boundaries and should reference items such as the existing boundaries and spheres of influence of existing cities and special districts, flood plains and communities of interest.

LAFCO staff should be available to convene a meeting of representatives from affected agencies and other interested parties to ensure early input into the proposed incorporation proposal and boundaries.

2. Use of Consultants

Consultants are typically used by LAFCOs and proponents for a variety of tasks because they may have the comprehensive and current knowledge of local government financing which is needed to prepare a CFA, of local government structure, of LAFCO policies and procedures and of incorporation processes. Consultants are usually responsible for helping to establish logical boundaries in conjunction with LAFCO, preparing and developing the CFA including revenue neutrality negotiations, preparing the application, reports, petitions and other forms as needed, monitoring the proposal and providing technical assistance.

The manner in which consultants are used varies but generally matches one of the two following models:

- Incorporation proponents hire the consultant. The consultant works for and is paid by the proponents. The proponents have more control over the preparation of the application and related studies.
- LAFCO hires the consultant. The proponents deposit money with LAFCO to cover consultant costs. The consultant works for and is paid by LAFCO with the funds deposited by the proponents. Proponents do not have control over the consultant's work, timing or end product.

Both methods can be successful. However, LAFCO is legally responsible for the information in the incorporation report and must ensure that it is accurate, complete and objective. Therefore, LAFCO may require that the proponents pay for the costs of hiring an independent consultant to verify any information and conclusions presented by a proponent's consultant. Proponents should discuss the use of consultants with LAFCO early in the process.

3. Alternatives to Incorporation

Approximately 6,500,000 people, or 18% of California's population, live in unincorporated communities. While these communities vary in size and character, one characteristic that many of them share is that they have the same range of challenges that cities face—changes in the character of their community, housing/jobs balance, provision of services, increased traffic and growth. Sometimes these communities see incorporation as the only means to acquire the political visibility and credibility to address their problems and they may be unaware of other alternatives.

Incorporation should not be started without thorough research about alternatives. *“Choices for the Unincorporated Community: A Guide to Local Government Alternatives in California”*

(Institute of Governmental Affairs, University of California at Davis, September 1981) contains a comprehensive discussion of alternatives to incorporations for unincorporated areas.

Below is an excerpt from “*Choices for the Unincorporated Community*”. Residents considering incorporation, should consider the following questions before making a formal proposal to LAFCO:

- What is the problem, if any, driving the desire for change in the existing governmental structure? Can the problem be addressed by other, more efficient means?
- What is the role of the County government in the community? Is the County willing or able to address the identified problems?
- What is the community’s relationship to other adjacent communities?
- What would the proposed boundaries look like and how would that affect other agencies and communities?
- What is the past history of local efforts to incorporate?

FRIEND OR FOE?

Incorporation proposals are often motivated by dissatisfaction with status quo and this can lead to a tendency to view the incorporation process as an adversarial one. LAFCO should not be viewed as an antagonist but as intermediary that is required to identify problems and issues and that tries to resolve them in an equitable manner.

Conversely, before an incorporation proposal is submitted, LAFCO staff must communicate clearly the standard of review, the requirements, the estimated cost and the probable timing of an incorporation proposal. LAFCO staff should be aware of the potential for a perception of bias in community groups.

In addition, the LAFCO Commissioners must ensure that they are objective and consistent in applying LAFCO policies and procedures and that they represent LAFCO in their deliberations and decisions and not the interests of their appointing authority.

- How is the community changing?
- What is the community’s capacity for self-governance?
- How are services currently provided and how would they change?
- Who is likely to benefit from a change and who is likely to lose?

Once these questions are answered, residents may have a better understanding of why they want to incorporate and whether incorporation will actually solve the problem(s) which concern them.

4. Initial Fiscal Feasibility Review

If proponents decide to take a closer look at incorporation, it may be helpful to perform a preliminary assessment of the fiscal resources available to a potential new city. The preliminary assessment, or initial fiscal feasibility review, is designed to help community groups conduct a quick appraisal of the potential for incorporation.

An initial fiscal feasibility review spreadsheet, provided in Appendix C, can be used by incorporation proponents to determine if revenues will be available to support municipal level services. The initial fiscal feasibility spreadsheet is

NOT intended to be used as a substitute for a CFA. It is only intended to be used as a means to educate proponents regarding the fiscal potential for incorporation.

Incorporations must be financially feasible. While this is often seen as the primary test for incorporation, it is only one of many standards of review LAFCO will use to evaluate the proposal. Since preparation of the CFA is generally the most expensive step in the incorporation process, an initial feasibility review can help to reduce costs to incorporation proponents who typically bear the financial burden of preparing a CFA.

III. INITIATING THE INCORPORATION

The Cortese-Knox-Hertzberg Act requires that areas proposed for incorporation include at least 500 registered voters ([§56043](#)). Each LAFCO may also adopt additional written procedures for the evaluation of an incorporation proposal. These procedures should be consulted prior to initiating an incorporation effort.

The legal process for incorporating a new city can be initiated ([56047](#)), or started, in three ways. They are:

- A petition signed by at least 25% of the registered voters is submitted to LAFCO. The Registrar of Voters must verify the number of valid signatures on petitions of registered voters.
- Incorporations can also be initiated by petitions signed by at least 25% of the landowners owning at least 25% of the assessed value of land within the proposed incorporation area. The County Assessor's Office must verify the petitions of landowners.
- The legislative body of an affected agency ([56014](#)) can adopt a resolution of application. An affected agency is any city, special district or county which contains territory within the proposed incorporation boundaries.

INITIATION BY PETITION VS THE INITIATIVE PROCESS

An incorporation initiated by a petition is signed by residents within the proposed incorporation area and is submitted to LAFCO. Only the residents within the incorporation boundary as approved by LAFCO may vote on the incorporation.

The initiative process allows voters to propose amendments to local or State laws. Generally Election Code procedures apply to petitions submitted for initiatives.

Each method of initiation is described in detailed in the following sections. Appendix B contains 3 sample forms including: Notice to Circulate Petitions, Registered Voter Petition and Landowner Petition. Appendix D contains a flow chart on the processing of incorporation petitions.

A. INITIATION BY PETITION OF REGISTERED VOTERS

Most incorporations are initiated through a registered voter petition. The process of explaining the goals of an incorporation effort to potential signers of petitions is an important step in the education of a community about the issues involved in and the purpose of incorporation. The

process of gathering signatures on petitions is also a means of determining the level of support for incorporation and of gathering feedback from residents. If the incorporation is to ultimately succeed at the polls, it must have a high degree of community consensus and the petition effort is part of the process to develop that consensus.

A registered voter petition for incorporation requires the signatures of not less than 25% of the total number of registered voters residing in the area to be incorporated ([§56764{a}](#)). A sample petition is included in Appendix B.

Petitions must be prepared and processed in accordance with the legal requirements of the Cortese-Knox-Hertzberg Act. The legal requirements for the process, form and content of incorporation petitions are specific and complex. The LAFCO Executive Officer and LAFCO legal counsel should review all registered voter petition forms when the proponents file a “Notice of Intention” ([§56700.4](#)) to circulate petitions with LAFCO. This preliminary review can lessen the possibility that petitions will be rejected for errors after the proponents have gathered signatures.

LAFCOs may adopt regulations governing contributors, expenditures and other activities relating to the petition process ([§56700.1](#)). Proponents should check with LAFCO about these regulations prior to circulating petitions.

B. INITIATION BY PETITION OF LANDOWNERS

Incorporations may also be initiated by petition of landowners ([§56048](#)). This type of initiation requires the signatures of not less than 25% of the total number of landowners who own property valued at a minimum of 25% of the total assessed value of land in the proposed incorporating area ([§56764.b](#)). Landowner petitions are verified by the County’s Registrar of Voters and/or Assessor’s Office who uses the most recent assessment rolls ([§56708](#)). While infrequently used, this type of initiation may be more useful when less densely populated communities want to form a new city.

Except for the type of signatures collected and the agency which verifies the petitions, the requirements for the form, the content and the processing of an incorporation initiated by landowners is the same as for registered voters. The incorporation must still ultimately be voted on in an election and must ensure that it has the support of registered voters. The proponents among the landowners assume the leadership role in the incorporation process and are responsible for completion of all application requirements including the payment of fees.

C. INITIATION BY RESOLUTION OF AN AFFECTED AGENCY

Any affected agency in the area proposed for incorporation may become the applicant by adopting a resolution of application ([§56654](#)). The resolution must also be preceded by a “Notice of Intent” and must include all of the same components as incorporation initiated by petition

except for the signature requirements ([§56054.c](#)). The agency board assumes the leadership role in the incorporation process and is responsible for completion of all application requirements including the payment of fees.

D. PROCESSING OF PETITIONS

The following sections explain the processing of petitions initiating incorporation.

1. Notice of Intent to Circulate a Petition

Before circulating a petition for incorporation, all incorporation proponents must file a “Notice of Intent” ([§56700.4](#)) to circulate a petition or to adopt a resolution of application. The Notice of Intent must include the name, mailing address and signature of the proponents ([§56068](#)) and a written statement (not exceeding 500 words) stating the reasons for the proposed incorporation. The Notice of Intent must be filed with LAFCO. A sample Notice of Intent form is included in Appendix B.

Only after filing the Notice of Intent with LAFCO may the petition be circulated. The LAFCO Executive Officer is required, upon receiving the “Notice” to notify affected agencies and jurisdictions ([§56658](#)).

2. Form and Content of a Petition or Resolution

The text of a petition or resolution of initiation is similar for all three types of initiation. Sample petition forms and notices are included within the Appendix B. The text of a petition or resolution of initiation must include the following ([§56700](#)):

- A statement that the proposal is made pursuant to Government Code Section 56000 et seq.
- A brief statement of the nature of the proposal and listing other changes of organization—this could include the special districts that are proposed for reorganization as a result of the incorporation, detachment or annexation of territory and or changes in applicable governmental boundaries.
- A map and description of the proposed incorporation boundaries and alternatives.
- Proposed terms and conditions—Although LAFCO has the ability to add, delete or modify proposed terms and conditions, the incorporation proponents should include some terms and condition to ensure that petitions signers understand the consequences of incorporation.
- A statement of the reason(s) for the proposed incorporation. —A clear statement of the reasons for incorporation is critical for the education of petition signers.

REVIEW OF PETITIONS

A petition is a legal document and must be prepared in accordance with the requirements of the law. It is strongly recommended that the proponents and LAFCO use the “Notice of Intent” filing as an opportunity to review the petition to ensure legal conformance.

- A statement as to whether the petition is signed by registered voters or landowners.
- The names of three proponents who will be the main contact for the proposal.
- A request that further proceedings be taken by LAFCO pursuant to the Cortese-Knox-Hertzberg Act.

COLLECT MORE THAN YOU NEED

In collecting petitions incorporation proponents should plan on collecting at least 10% to 15% more signatures than the minimum requirement to compensate for signatures found to be invalid. Each circulator of a petition should review the map of the incorporation area with each signer of the petition to confirm his/her residence. This helps reduce the number of invalid signatures.

- A statement of whether the proposed incorporation is consistent with the spheres of influence previously adopted by LAFCO.
- The petition can also propose a name for the new city ([§56722](#)) and provisions for appointment of a city manager and other city officials ([§56723](#))

The form of the petition must provide for each signer's printed name, street address (post office boxes are not sufficient), signature and the date of signature ([§56704](#)). Each signer of the petition must be either a registered voter or landowner, depending on which type of petition is being circulated, within the boundaries of the proposed incorporation. For landowner petitions, each signature must be accompanied by a description of property owned within the incorporation area, such as an assessor's parcel number.

3. Timing of Petitions

All signatures must be gathered within a six-month period from the date of the first signature ([§56705](#)). Incorporation petitions must be submitted to LAFCO for filing within 60 days of the date of the last signature on the petition. The total number of valid signatures necessary to meet the 25% requirement for a petition of registered voters will be established as of the date of the last voter registration report prior to the date of the first signature on the petition ([5607](#)) and ([56706](#)) and ([Election Code 9113-9115](#)). It is important that

incorporation proponents plan the timing of their petition drive carefully—there is only six months between obtaining the latest voter registration report and getting the first signature and the date when the petitions have to be submitted to LAFCO.

Preparing a CFA

The preparation of a CFA is the legal responsibility of LAFCO. In practical terms, that means that LAFCO will determine who prepares the CFA and when the CFA shall be prepared. It is the responsibility of the proponents to discuss the method of preparation of the CFA with LAFCO prior to beginning any incorporation efforts. Failure to do so may result in the processing of the application being delayed and in additional costs to the proponents.

Proponents are typically required to pay for the costs of the CFA.

Within 30 days after the date a petition is received by LAFCO, the Executive Officer shall cause the petition to be examined and shall issue a "Certificate of Sufficiency" or "Notice of Insufficiency" ([§56706{a}](#)) after the results of the examination are received. The County's Registrar of Voters examines registered voter petitions to determine the number of valid signatures ([§56707](#)) while landowner petitions are examined by

the County Assessor's and/or Registrar Office based on the "most recent assessment roll" ([§56708](#)).

If the petition is determined to be insufficient based upon the number of signers, the LAFCO Executive Officer will notify the proponents by certified mail. The proponents have 15 days after the date of this notice to submit a supplemental petition to the LAFCO Executive Officer ([§56706.b \(1\)](#)). It is important to note that this 15-day period is the only chance to collect the additional number of required signatures if the original number of signatures is insufficient.

Within 10 days of the date the supplemental petition is filed, the LAFCO Executive Officer will have the petition examined and certify in writing the result of his/her examination. If the petition is found to be insufficient, it will be filed as a public record "without prejudice" to any future incorporation effort in the same area ([§56709](#)). Without prejudice means that proponents can begin the process of initiating another incorporation without waiting a specified period of time.

IV. PREPARING AN INCORPORATION APPLICATION

Incorporation applications must include a variety of information and studies. The minimum information ([§56652](#)) which must be submitted to LAFCO includes: a petition or resolution of application initiating the proposal; a description of incorporation proposal; a map and legal description of the proposed incorporation area; any data and information that may be required by any regulation of LAFCO; any additional data and information, as may be required by the LAFCO Executive Officer, pertaining to any of the matters or factors which may be considered by LAFCO; and the names of the officers or persons, not to exceed three in number, who are to be furnished with copies of the Executive Officer's report by LAFCO and who are to be furnished with mailed notices and copies of the Executive Officer's report. Incorporation applications may also include a CFA.

Proponents should note that while the Cortese-Knox-Hertzberg Act's timelines for applicants are generally mandatory, the timelines for LAFCO are generally advisory. Proponents should not assume that LAFCO would complete their review and consideration of the incorporation proposal within the suggested time limits ([56106](#)).

[Subsections \(d\) and \(e\) of Section 56652](#) provide the LAFCO Commission and its Executive Officer with the authority to require additional information as needed to process the incorporation proposal. State law also empowers each LAFCO to adopt additional written procedures for the evaluation of proposals ([§56375{g}](#)). Incorporation proponents are strongly encouraged to check with the LAFCO staff in their county to obtain an application and to determine if there are specific procedures or policies adopted by that LAFCO which may affect the incorporation.

A. DESCRIPTION OF INCORPORATION PROPOSAL

Each incorporation proposal should provide a description of the incorporation including:

- The reasons for proposing incorporation. The reasons for incorporation vary and include, but are not limited to: improving local public services; capturing increased revenues to support local services; giving a community local control over land use planning; creating a locally accountable governing body; and, pursuing local policy.
- A clear statement of concerns, issues or problems, if any, with the existing governmental structure.
- Any changes proposed from the way public services are currently being provided. For example, if the incorporation proposes the reorganization of special districts as part of the incorporation, those governmental changes should be included in the description of the incorporation proposal.
- A brief history of the incorporation area including the results of any previous incorporation efforts.
- Demographic, geographic and economic data which describe the incorporation area. This information can be readily obtained from the United States Census Bureau or other public agencies.

B. COMPREHENSIVE FISCAL ANALYSIS (CFA)

A comprehensive fiscal analysis (CFA) must be prepared for all incorporation proposals. Following submission of an incorporation application, the LAFCO Executive Officer will prepare, or cause to be prepared by contract, a CFA and will release that analysis for public review ([§56800](#)).

While some incorporations proponents have prepared their own CFAs and submitted them to LAFCO with their application, LAFCO has the ultimate responsibility for ensuring that the information in the incorporation report is accurate, complete and objective. Some LAFCOs may require that the proponents pay for the costs of hiring an independent consultant to verify or supplement the work of the proponent's consultant. This can increase the processing time for incorporations and add additional costs. The preparation of the CFA should not begin until after a successful initiation of the incorporation and after submittal of an application to LAFCO.

LAFCOs are encouraged to adopt written policies and procedures for a pre-initiation review of incorporation proposal, preparation of a CFA ([§56300\(a\)](#)), a schedule of fees and clear and consistent standards of review for a CFA and an incorporation proposal. The steps in the preparation of a CFA are described below under Section V. A, Preparation of the Comprehensive Fiscal Analysis.

C. SERVICE PLAN

All incorporation applications must be accompanied by a service plan. A service plan is a proposal submitted by the incorporation proponents detailing which municipal services, after

incorporation, will be provided by the new city or by other agencies. [\(§56653\)](#). A service plan should include, at a minimum, the following:

- A description of the local public agencies presently serving the area including maps of service areas;
- The range and level of services currently provided;
- Proposed changes in the governmental structure (e.g., districts proposed to be dissolved and/or merged with the new city);
- Anticipated service improvements or upgrades;
- Information about how changes or improved services would be financed; and
- The increased or decreased range and level of services potentially available in the community if incorporated.

D. MAP AND LEGAL DESCRIPTION

All incorporation applications must include a map and legal description of the proposed incorporation boundaries including a rationale for the boundaries proposed and a description of possible boundary alternatives. If proponents do not propose alternative boundaries, a rationale for that decision should also be included.

Government Code section [56668\(f\)](#) states that one factor to be considered when reviewing a proposal is the “...definiteness and certainty of the boundaries of the territory, the nonconformance of the boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory and other similar matters affecting the proposed boundaries”. To ensure consistency with this requirement, incorporation applications should include a metes and bounds legal description. However, individual LAFCOs may require the preparation of a metes and bounds description at different stages during the process. Incorporation proponents are responsible for the cost of preparation of both the map and the metes and bounds legal description.

Since LAFCO has the legal responsibility to consider alternative boundaries, incorporation proponents are strongly encouraged to work with LAFCO staff early in the process to develop a logical incorporation boundary and alternatives. Logical incorporation boundaries must recognize: other local agencies boundaries and SOIs; must include a variety of land uses; must consider topography and communities of interest and must not create islands of unincorporated territory. Please refer to Section II, B-1 for a more complete list of factors which determine logical incorporation boundaries.

Incorporation proponents who do not consult with LAFCO or consider alternative boundaries may be required to fund revisions to the original incorporation application. However, if incorporation proponents have developed an incorporation boundary and alternatives in

consultation with LAFCO prior to submitting an application, the costs of additional analysis resulting from any changes in the boundaries or addition of alternative boundaries as directed by LAFCO should be borne by LAFCO and not by the proponents.

E. SPHERE OF INFLUENCE (SOI) AND SERVICE REVIEW

A Sphere of Influence (SOI) is defined as the “...probable physical boundaries and service area...” [\(§56076\)](#) of an agency. An SOI includes territory not within the corporate limits of the agency but which is expected to be annexed at some time in the future. There may be communities or territory closely connected with a proposed incorporation area which are not ready to be included in the new city but need to be acknowledged for future planning. The impacts of incorporation on the proposed SOI should be considered as part of the incorporation application and may, although not required to, be included in the CFA.

It is recommended that incorporation proponents develop a proposed SOI together with the proposed incorporation boundary and alternatives. LAFCO may either approve a SOI for a new city at the time of the LAFCO Commission hearing or delay consideration of the SOI for up to one year [\(§56426.5\)](#) after voter approval. Some LAFCOs defer the SOI decision for the full year to allow the new city council time to consider the SOI in connection with the new city’s general plan process.

Beginning in January of 2000, LAFCOs are required to undertake a municipal service review prior to the adoption or update of an SOI [\(§56430\)](#). Incorporation proponents need to consult with LAFCO to determine how and when a service review will be prepared for an incorporation proposal or a newly incorporated city. LAFCO should develop a policy which clearly states when a service review for an incorporation or a newly incorporated city will be conducted. The policy should also clearly state when a service review will be prepared for other agencies whose boundaries or SOIs may change as a result of incorporation.

F. PAYING FOR THE INCORPORATION APPLICATION.

Fees for incorporation proposals vary and are set by each LAFCO. All LAFCOs should adopt general fee schedules to allow potential applicants the ability to estimate the potential incorporation costs.

Incorporation proposals can be charged on an actual cost-recovery basis, on a deposit system, as a set fee or other method. Proponents are required to fund the incorporation effort, including the costs of LAFCO to develop information and process the application. The cost of incorporations has ranged from \$50,000 to \$150,000 based on the experience of several incorporation efforts over the past 5 years.

Since incorporation is almost always a volunteer effort, raising the necessary funds can be difficult. For incorporation proceedings that have been initiated by a successful petition,

LAFCO ([§56833.g](#)) may, upon receipt of substantial proof submitted by the proponents that they are unable to raise sufficient funds, take no action on the proposal and forward a written request for a loan to the Controller of the State of California. The proponent's written request should state the amount requested and should be sufficient to cover incorporation expenses. The written request may also include, but is not limited to, the following:

- Bank statements of incorporation accounts
- Audit of funds of incorporation accounts
- Affidavits signed by the proponents
- Information as necessary to verify that the incorporation proponents are unable to raise sufficient funds

LAFCO shall forward the loan request, along with the certification of insufficient funds as supplied by the proponents, to the State Controller by registered mail. State funds are NOT automatically granted to an incorporation effort and are subject to availability and other budgetary limitations of the State. It should be noted that LAFCO has no discretion or authority over the State funds or incorporation loans; LAFCO's role is to simply forward the request and certification to the State Controller for consideration.

Repayment of the loan shall be made a term and condition of LAFCO approval. If the incorporation is successful, the loan shall become a legal obligation of the newly formed city and shall be shown as an expense in the budget projections of the CFA for the proposed city. Repayment of the loan must be made within two years of the effective date of incorporation. If the proposal is denied by the LAFCO commission or defeated at an election, the loan shall be forgiven.

V. REVIEWING THE APPLICATION: LAFCO STAFF ANALYSIS

After the incorporation application and fees have been submitted LAFCO staff will mail a notice of receipt of the application to all interested and affected agencies and the proponents ([§56658](#)).

LAFCO staff then has 30 days to review the application for completeness. If the application is considered complete, the LAFCO Executive Officer will issue a Certificate of Filing ([§56651](#)) which indicates that the application is ready for a public hearing. LAFCO must then set a public hearing for the incorporation within 90 days. If the application is considered incomplete, LAFCO must indicate what information is needed.

Once the application is complete, LAFCO staff must analyze the merits of the proposal, evaluate it for consistency with existing laws and adopted LAFCO policies and procedures, conduct the environmental review, prepare or cause to be prepared the CFA, complete the revenue neutrality process and prepare the Executive Officer's report. As necessary and as provided in the Cortese-Knox-Hertzberg Act ([§56652](#)), the LAFCO Executive Officer can also request additional information to process the incorporation application. The staff review may take up to a year

depending on the completeness of application, the complexity of the proposal and the experience and staffing level of LAFCO.

Since the level of analysis that LAFCO staff must conduct prior to scheduling the item for a hearing is so detailed, it is rare that an incorporation proposal will be deemed complete within 30 days after submittal. Therefore, the LAFCO Executive Officer will notify the applicants within 30 days that the application is incomplete and will specify those parts of the application which need additional information ([§56658{g}](#)).

Appendix E contains a flow chart of the incorporation process.

A. PREPARATION OF THE COMPREHENSIVE FISCAL ANALYSIS (CFA)

The CFA ([§56800](#)) is a critical part of the LAFCO Executive Officer's report. It includes several legally required components and is usually prepared and processed in a series of sequential steps. Those steps are described in the following sections.

It is recommended that preparation of the CFA begin after submittal of an application to LAFCO to ensure that multiple versions of the CFA do not have to be prepared. This will help to keep costs and preparation time at a minimum.

As previously mentioned, it is important in the preparation of the CFA to have identified alternative boundary scenarios early in the incorporation process. The early identification of alternative boundaries will allow greater efficiency in the collection and segregation of related costs and revenues. Adding or excluding areas can have a significant impact on the CFA, on revenue neutrality, and on the amount of property tax transfer. The revenue neutrality impact analysis of the CFA should also incorporate alternative boundary scenarios so that any agreement on a revenue neutrality mitigation payment plan can be adjusted to reflect the financial impacts of alternative boundaries.

The CFA must also address revenue neutrality. Incorporations should not occur primarily for financial reasons ([56815](#)) and, under the Cortese-Knox-Hertzberg Act, should result in a similar exchange of both revenue and responsibility for service delivery among affected agencies. Negative financial impacts to affected agencies must be identified and mitigation measures proposed. A suggested process for determining revenue neutrality impacts and mitigation is also described in a subsequent section of these Guidelines.

The CFA must be completed and distributed not less than five (5) days prior to the date of the LAFCO Commission's hearing. The Executive Officer will notify all interested parties that the CFA is available for public review by publishing notice in a newspaper of general circulation serving the proposed incorporation area and by mailing notice to all affected agencies, the proponents and all persons who have filed a written request for notification. The notice shall specify the locations where the fiscal analysis can be reviewed and the time period in which the State Controller's review (see below) can be requested.

1. Gather Financial and Service Level Data

Existing law requires LAFCO to prepare the CFA ([§56800](#)) from data provided by affected public agencies, franchise agencies and the county. Data collection should be coordinated by LAFCO to ensure that it is efficient and cost-effective.

The data collection begins with a data request letter mailed, generally by LAFCO, to all agencies with territory within or currently serving the proposed area of incorporation. The data request letter must also be sent to the county committee or school district organization and each school district within the proposed incorporation boundary. The data request letter should request the agency both acknowledge receipt of the letter within 15 days and that it respond to the letter within a specified and reasonable time frame as established by the LAFCO Executive Officer ([§56658\(b\)](#)).

In the data request letter, the affected agencies are asked to verify existing levels of service, associated costs, and revenues associated with the provision of service(s) to the proposed incorporation area. This information is used to establish the base year costs and revenues ([56810](#)).

Data used for the CFA must be from the most recent fiscal year for which data are available preceding the issuance of the Certificate of Filing ([§56800](#)).

Counties end their fiscal year on June 30th; however, the final financial data may not be available until August or September due to the length of time needed to assemble and prepare the financial information. The Executive Officer's report and CFA must be completed and heard at a public hearing by the LAFCO Commission within the same fiscal year or the data must be updated and/or a new CFA prepared. Therefore, the timing of data collection is critical to an incorporation. Data request letters should be sent to all agencies and county departments at the start of a fiscal year (July 1) although data may not be available until August or September. Responses should be received by October or November if the CFA and LAFCO Executive Officer's report are to be completed during the current fiscal year. Often LAFCO and incorporation proponents begin working with agencies and the county a full year ahead of the submittal of the application to ensure efficient timing of data collection.

If precise cost figures and levels of service are not available or if the reporting agency does not collect data specific to the proposed incorporation area, the reporting agency must document the source of information and the method used to extrapolate the data. Projected general government costs are frequently based on staffing levels, salaries, and associated costs for cities of similar size. LAFCOs and proponents can use the data gathered from affected agencies to establish a service plan.

2. Establish a Service Plan

Cities can provide services through one of two models. A municipality can be a “full-service” city which means that it provides all municipal level services (such as fire, police, garbage collection, water, sewer, etc.) through city employees in departments governed by the city council. Alternatively, a city can be a contract city, providing many of these services through contract(s) with service providers such as special districts, the county or private companies providing contract municipal services. Either model can be successful but has different impacts on data collection and ultimately on the CFA.

To determine which agencies or county service departments must be contacted to provide data, it is necessary to know what services are proposed in the service plan to be transferred to the new city. California cities are **required** to provide only a limited number of municipal services, including:

- General legislative functions.
- Land use planning and control over land use and development. (May also be provided by means of a contract with other entities such as the county or private firms.)
- Law enforcement (although this service may be provided by means of a contract with other entities).
- Maintenance of public roads and other public property owned by the city. (May also be provided by means of a contract with other entities such as the county or private firms.)

The agencies and/or county departments providing these services should receive a data request letter. Other services are optional to a city, including:

- Fire protection and suppression
- Animal control
- Libraries
- Parks and recreational services
- Street lighting
- Street median maintenance
- Domestic water
- Wastewater treatment and disposal
- Solid waste management
- Flood control
- Social services

The agencies or departments providing these services should also be sent data request letters if changes in the provision of services are part of the incorporation proposal.

The CFA must analyze the fiscal implications of proposed changes in services ([§56810](#)). The fiscal implications of reorganizing existing agencies into the new city should also be carefully reviewed and included in the CFA. The following table is a hypothetical example of which services might be transferred to a new city and would therefore have to be analyzed as part of the CFA.

Exhibit 3
TRANSFER OF SERVICE RESPONSIBILITY
EXAMPLE

Public Service	Current Provider	Post-Incorporation Provider	Level of Service	Funding Source
Animal Control	County	City (contract with County)	No Change	User fees, General Fund
Administrative Services	County	New City	Likely increase	General Fund
Wastewater	Water District	Water District	No Change	User fees, Property tax
Water	Water District	Water District	No Change	User fees, Property tax
Emergency medical	County Fire District	County Fire District	No Change	User fees, Fire Fund, Property tax
Fire protection	County Fire District	County Fire District	No Change	Fire Fund
Drainage/flood control	County	New City (local) and County Flood Control District (regional)	No Change	County Flood Control Property Tax, General Fund
Land use regulation	County	New City	No Change (demand-based)	User fees, General Fund
Libraries	County Library District	County Library District	No Change	District property taxes, fines and fees, and State aid.
Building inspection	County	New City	No Change (demand-based)	User fees
Police protection	County	New City (contract w/ public agency)	Likely increase	General Fund
Trash collection and disposal (public)	County (franchise w/ private firm)	New City (franchise w/ private firm)	No Change	User fees
Road maintenance/ Public Works	County	New City	Likely increase	Fuel taxes/General Fund
Public Transit	County Transportation Authority	County Transportation Authority	No Change	User fees, grants, subventions and property taxes
Park & Recreation	County Service Area or Community Services	New City	No Change	User fees, General Fund
Street Lighting	County	New City	No Change	General Fund

3. Establish Base Year Costs

Once data gathering is complete, LAFCO will develop an estimate of the base year costs ([§56800\(a\)](#)). Base year costs are the costs to provide municipal level services if the incorporation area had been a city during the base year. The primary examples of identifiable base year costs include law enforcement, animal control, public works administration (not funded by gas tax revenues), code enforcement and the net cost of land use planning and regulation.

Base year costs are used to determine a base year budget as well as the property tax revenue transferring to the new city and ultimately, the new city's ability to provide adequate municipal services. Base year costs (and revenues) are also used to calculate revenue neutrality ([§56810](#)).

When determining base year costs, LAFCO must include all direct and indirect costs associated with the current provision of existing services in the proposed incorporation boundary. These costs should reflect the actual or estimated costs at which the existing level of services could be provided by the proposed city and should include any general fund expenditures necessary to support or subsidize a fee-supported service if the costs of providing the service are not fully recovered through fees.

LAFCO must identify the costs being transferred to the new city that will result in an administrative cost reduction to other agencies. LAFCO should also review how the costs of any existing services compare to the costs of services provided in cities with similar populations and similar geographic size that provide a similar level and range of services and must make a reasonable determination of the costs expected to be borne by the new city.

Revenues should not be included in the base year budget unless they were realized, received or collected during the base year. Revenues, which were project-specific or are used to cover, either partially or wholly, costs are usually not included. These offsetting revenues might include federal monies used for specific projects. Finally, revenue resulting from development currently under construction is excluded from the base year costs. For example, a new commercial development, which would not go on the tax rolls and did not produce sales tax or user tax revenues until the following fiscal year, would not be included.

4. Calculate Property Tax Transfer

An important component of the CFA is the calculation of the estimated transfer of property tax from the county and any affected special districts to the new city. The property tax transfer calculation results in the county and affected special districts transferring property tax revenues to the new city in proportion to the services responsibilities assumed by the new city.

The Cortese-Knox-Hertzberg Act ([§56810](#)) provides a formula by which a share of the property taxes is transferred from the county and special districts to a newly incorporated city. The property tax transfer, or allocation, to the new city is calculated by LAFCO by multiplying the

total net cost of transferred services by the Auditor's ratio, as described below and shown in Exhibit 5, Calculation of Property Tax Transfer. LAFCO determines the total net cost, based on information supplied by the county and other affected local agencies as described during the Data Gathering, of all services to be transferred to the new city.

The net cost includes both direct costs and overhead or indirect costs funded by general-purpose revenues. The total net cost excludes any portion of the total costs which was funded by special purpose revenue, federal revenues, and revenues derived from fees, charges or assessments which are levied to specifically offset the cost of particular services. Examples of these revenues include land use planning fees, building permit fees, gas tax revenues, landscape and lighting assessments, and animal licensing fees.

The total amount of revenue from all sources available for general purposes means the total amount of revenue, which an affected local agency may use on a discretionary basis for any purpose. The total amount of revenue does not include revenue ([§56810.a-c](#)) which, by statute, is required to be used for a special purpose, revenue from fees, charges, or assessments which are levied to specifically offset the cost of particular services and do not exceed the cost reasonably borne in providing these services, and revenue received from the federal government which is required to be used for a specific purpose.

The total net cost is multiplied by the Auditor's ratio to produce the base property tax allocation, or the amount to be transferred to the new city. The Auditor's ratio is the ratio of property taxes allocated to the general fund of the county and each affected agency during the prior fiscal year to all revenues received by the county and affected agencies for general purposes during the prior fiscal year. The Auditor-Controller of the affected county determines the ratio.

The Auditor-Controller prepares the ratio each year pursuant to Section 93 of the Revenue and Taxation Code. (See Exhibit 4, "County Property Tax as a Percentage of Revenue Available for General Purpose.") LAFCO and the proponents are obligated to accept the determination of the county Auditor-Controller. The LAFCO Commission uses the Auditor's ratio and the net cost of services to determine the amount of property tax revenue to be transferred to the new city. (See Exhibit 5, Calculation of Property Tax Transfer)

The formula used by LAFCO to determine the base property tax transfer as established in the above cited Government Code Section is depicted below.

$$\text{Total Net Cost of Transferred Services} \times \text{Auditor's Ratio} = \text{Base Property Tax Allocation}$$

5. Developing Budget Projections

Using the financial data gathered from agencies providing services during the prior fiscal year, the base year costs/revenues and the property tax transfer as determined by LAFCO, the CFA must include budget projections for the proposed new city ([§56800.a-c](#)). Budget projections must include:

**EXHIBIT 4
EXAMPLE
COUNTY PROPERTY TAX AS A PERCENTAGE OF REVENUE
AVAILABLE FOR GENERAL PURPOSES**

Item	2000-01 Revenues
PROPERTY TAX REVENUE	
Current Secured	\$47,064,968
Current Unsecured	2,489,979
Prior Unsecured	62,117
Supplemental – Secured	791,623
Supplemental – Unsecured	14,107
Penalties & Cost Delinquencies	3,307,826
AB 1661 – ERAF Subvention	1,457,906
Airplane	210,462
Timber	95,059
Racehorse	10,381
Total	\$55,504,428
OTHER GENERAL PURPOSE REVENUE	
Redemption Fees	\$111,446
Deed Fees	2,870
Sales Tax	12,409,401
Property Transfer Fee	1,558,301
Development Fees	207,659
Franchise Fee	2,514,174
Interest Income	12,264,030
Commissions	12,175
Rental Income	182,969
Motor Vehicle-In-Lieu	47,845,516
Other State in-lieu taxes	15,469
Tobacco Tax	10,453,426
Homeowners In-Lieu	1,084,732
Williamson Act	5,813,928
State Other	2,837,000
Net Revenue Available for General Purposes	\$97,313,096
TOTAL GENERAL PURPOSE REVENUES	\$152,817,524
Property Tax as % of General Purpose Revenues	36.32%

EXHIBIT 5
EXAMPLE
CALCULATION OF PROPERTY TAX TRANSFER
Scenario 1

A. 2000-01 County Cost Estimates

	Net County Cost
Sheriff Department	\$2,929,347
Animal Control	74,480
Code Enforcement	53,829
Street Lighting	116,878
Total Expenditures – General Fund	\$3,174,534

B. Transfer of Tax Base

Total Expenditures Subject to Transfer	\$3,174,534
County Auditor's Ratio 2000-01	28.84%
Property Tax Base Transferred from County:	\$915,560

C. Calculation of Tax Allocation Factor (TAF)

Assessed Value (FY 2002/2003):	\$4,051,833,786
Total Property Tax Collected @1% AV):	40,518,338
Property Tax Base Transferred from County:	\$915,560
Tax Allocation Factor:	2.26%

- The costs to the proposed city of providing services during the three fiscal years following incorporation.
- The revenues of the proposed city during the three fiscal years following incorporation.
- The effects of the costs and revenues on any affected local agency during the three fiscal years following incorporation.
- Any other information needed to make the findings as required for an incorporation proposal.

Existing law requires budget projections for only the first three (3) years after incorporation. However, during the first seven (7) years after incorporation, a city receives some state subventions based on a formula of three (3) times the number of registered voters. After the seventh year, subventions are subject to a formula based on the actual population of the city. The subventions may represent a significant but temporary source of funding for any new city. To accurately analyze the long-term financial feasibility of a proposed incorporation, it is recommended that the CFA provide budget projections for ten (10) years to reflect the drop in revenues collected by the new city after the state subventions decrease in the eighth year. A ten-year projection allows for a more accurate estimate of a new city's long-term financial feasibility.

A CFA must also include in its budget projections a transition period budget. A transition period is the time between the effective date of the incorporation and the date on which it must assume full service responsibility or July 1 following the effective date. The effective date is significant because the flow of revenue to the new city is affected by that date. For example, third quarter sales tax revenues are generally not received by a city until the end of the fourth quarter.

During the transition period, the new city receives certain revenues but services are still provided by the county. This allows the city time to organize its operations in anticipation of full cityhood. The new city receives certain revenues during this period, such as motor vehicle in-lieu fees and sales taxes that may allow it to create a fund balance to carry over into the first full fiscal year. To make this calculation, the CFA needs to assume an effective date and the length of the transition period. The effective date should be established by LAFCO working with the incorporation proponents.

Finally, the CFA's budget projections should be presented on a cash basis. New cities must operate on a cash basis since they have no initial fund balances on which to depend for cash flow. Further, the cash basis approach provides a more realistic picture of both the year-end surpluses (or deficits), which will be experienced by the new city.

a. Establishing Budget Projections: Revenues

The new city's general fund and special purpose revenues usually come from a variety of revenue sources. A CFA, at a minimum, should provide estimates of revenue from the following revenue sources:

i. Base Property Tax Allocation

As discussed above, the Cortese-Knox-Hertzberg Act provides a formula by which a share of the property taxes is transferred from the county and other affected local agencies to the new city. The process requires LAFCO to determine the total net cost of transferred services based on information supplied by the affected local agencies, during the prior fiscal year. The net cost includes both direct and indirect costs funded by the general fund. The total net cost is multiplied by the Auditor's ratio. LAFCO uses the Auditor's ratio and the net cost of transferred services to determine the annual amount of property tax revenue for the new city. The base property tax can increase each year as allowed per statute and by any change of ownership and new development.

Besides establishing the maximum property tax rate, Proposition 13 also limits the rate at which the assessed values of individual properties may increase. Specifically, the assessed value may increase by an annual rate of no more than 2% when held in the same ownership, and is increased to market value at the time of sale. The total property tax collected will increase as property ownership changes and new development takes place.

ii. Special District Property Taxes

Current property tax revenues of certain special districts that are dissolved (see Service Plan) or have territory detached as a result of incorporation would be transferred to the new city upon incorporation. The new city may also receive the current fund balance (reserves) of the affected special district upon dissolution or a proportionate share of the fund balance upon detachment of territory from the district.

iii. Property Transfer Taxes

The amount of Property Transfer Tax received by the new city will depend upon the level of resale activity and new development within the incorporation area. A conservative annual property turnover rate should be assumed, based upon information from the county, land developers, and/or real estate agents in the area. .

iv. Sales Taxes

Upon incorporation, the new city will be eligible to receive a percentage of the sales tax charged on qualifying retail sales from businesses within the proposed incorporation area. The estimated sales tax revenues should be based on data from the State Board of Equalization.

Sample City Budgets Available From California League of Cities

Through a joint service of the California Society of Municipal Finance Officers (CSMFO) and the League, more than 100 city budgets are available through the League library every year.

CSMFO encourages members to develop budgets that are useful as both a management and communication tool. To this end, CSMFO offers a budget review and awards program that recognizes city budgets that meet specific presentation criteria. One copy of each budget is submitted as a loan copy for the League library.

Incorporation proponents may be interested in examining budgets from a similar region or cities with a comparable size population.

v. Transient Occupancy Taxes (TOT)

If the proposed incorporation area contains hotels, motels or other facilities that provides short-term and/or overnight accommodations, all TOT revenues previously collected by the county will be allocated to the new city. This data can be obtained from the county and is based on the approved TOT rate, average daily room rates, and estimated daily occupancy rates.

vi. State Subventions

Upon incorporation, the new city will be eligible to receive Motor Vehicle In-Lieu and off-highway vehicle license taxes. These taxes are collected by the State's Department of Motor Vehicles and allocated to cities on a per capita basis. Both subventions would be based on three (3) times the number of registered voters during the first seven years after incorporation. At the beginning of the eighth year, the State will recalculate subventions based upon the actual population of the city.

vii. Franchise Fees

Upon incorporation, the new city will receive franchise fees currently paid to the county by the affected utilities including gas, electric and cable TV providers. Additional franchise fees may also be received from the new city's solid waste disposal/recycling service if applicable. The estimated annual franchise fees can be obtained directly from the county or utilities during the data-gathering phase of the CFA preparation.

viii. Road Related Subventions

A significant portion of road fund subventions are calculated and allocated to cities on a per capita basis. Similar to other state subventions, road fund revenues are initially based on three times the registered voter population. In the eighth year following incorporation, these revenues would be adjusted to account for the actual population rather than three times the registered voter population. Revenues derived from these gasoline taxes are restricted to use on road maintenance and improvement.

ix. Transportation Related Sales Taxes

Many urban counties impose an additional sales tax levy to fund transportation improvements. Apportionment of these sales tax revenues may be based on a formula using population, miles of public roads and taxable sales.

x. Other Revenues

Estimates for other revenues can be obtained from the county and include land use related, planning, permit and inspection fees, motor vehicle code fines and forfeitures, and other miscellaneous revenues including DMV abandoned vehicle reimbursement, parking fines, non-

planning related charges for services, regulatory fees, applicable parcel taxes and assessments, and other charges.

b. Establishing Budget Projections: Expenditures

The new city's level of expenditures will be based primarily on the cost of transferred services currently provided by the county and other local agencies. The level of services provided and the type of provider (either the new city or a contract entity) will impact the annual projection of cost. These projected costs can also be based on a review of the budgets of similar sized cities. The types of expenditures usually include:

- General governmental administrative functions such as city manager, city clerk, city attorney and finance.
- Community development such as land use planning and regulation, permit issuance, and code enforcement.
- Public safety such as law enforcement, fire protection emergency medical and animal control.
- Public works such as street maintenance and repair, street lighting, landscape and park maintenance, storm drain maintenance and repair, local flood control, and public facility maintenance and repair.
- Community services such as parks, open space, libraries, cultural arts, senior citizens and adult and youth recreation programs.
- Non-departmental costs such as lease/rent for office space, utilities, liability insurance costs, communication and computer expenses, custodial services, and miscellaneous supplies.
- Water and sewer and other utility services.
- Transition year repayment, if required under the revenue neutrality process, must be paid within five years of incorporation and is the reimbursement to the county for the net cost of services provided during the transition year.

A contingency fund based on a percentage of estimated expenditures should be reflected in the CFA projections to cover unforeseeable expenses. Most cities attempt to reserve a minimum percentage of the operating budget in unappropriated reserves as prudent fiscal policy. It is recommended that, at a minimum, a contingency fund of 10% of estimated expenditures be included in the CFA.

It is important to note that the CFA may show a cumulative funding surplus, but that funding surplus should not be directly identified as an operating reserve. A reasonable unappropriated reserve fund, in addition to a contingency fund, is necessary. Although the preferred level of a reserve fund can vary and should be based on the past experience of comparable new cities, a

minimum reserve of at least 10% is recommended. A reserve fund, in addition to a contingency fund, is required because:

- A new city has no historical track record on the cost or level of services required to meet the expectations of the newly incorporated community.
- Unanticipated expenditures could occur due to major disasters, emergencies, liability claims, and litigation settlements.
- Local finances may be subject to changed based on the State's budget.
- Changing economic conditions could result in a decrease in general fund revenues.
- Funds may have to be budgeted for non-road-related capital improvement projects. As the new city grows in staffing and assumes services from the county and outside contractors, there may be a need for new facilities, vehicles and other major equipment

c. Determining Appropriations Limits

THE GANN LIMIT

Proposition 4, the Gann Initiative approved by the California voters in 1979, sets a constitutional appropriations limit on governmental agencies. The appropriations limit is simply the amount of money that a governmental agency can spend in a fiscal year. The appropriations limit is determined provisionally by LAFCO during the incorporation process. The voters at the first municipal election held following the first fiscal year after incorporation set a permanent appropriations limit.

The next step in preparing the CFA is the determination of an appropriations limit for the proposed city. (§56812). LAFCO estimates the amount of revenue anticipated to be received by the new city in its first full year of operations from the “proceeds of taxes.” These are revenues from taxes rather than from fees, assessments or service charges.

The second step is adjusting the amount of the “proceeds of taxes” to reflect an increase in the cost of living and to establish the provisional limit by projecting the second full operating year costs (including the impact of inflation and population changes). The inflation rate is assumed to be based on current accepted cost of living indices with an anticipated percentage population increase. Exhibit 6 depicts a hypothetical example of a calculation of a provisional appropriations limit.

The new city council shall determine the proposed permanent appropriations limit of the city which will be submitted to the voters. This limit is based on the amount of revenue actually received by the new city during the first full fiscal year of operation, adjusted for an increase in the cost of living and population during the next full fiscal year of operation. The permanent appropriations limit of the new city shall be set at the first municipal election, which is held following the first full fiscal year of operation.

EXHIBIT 6
EXAMPLE
DETERMINATION OF PROVISIONAL APPROPRIATIONS LIMIT

Proceeds of Taxes*

Property Tax	\$1,087,018
Sales Tax	3,094,801
Motor Vehicle In Lieu	2,550,481
Property Transfer Tax	337,118
Section 2105	405,810
Section 2106	291,336
Section 2107	545,469
Section 2107.5	6,000
Transportation Sales Taxes	<u>381,810</u>
Subtotal	\$8,699,843
Interest Earnings	521,991
 Total Proceeds of Taxes	 \$9,221,834
Cost of Living Factor	3.00%
Population Growth	1.90%
 Provisional Limit	 \$9,673,703

**These are estimates of revenues anticipated during the first full year of incorporation.*

**EXHIBIT 7
EXAMPLE
CALCULATION OF COUNTY REPAYMENT**

2001-2002 TRANSITION YEAR

A.	Expenditures	
	Sheriff Department	\$3,200, 977
	Animal Control	90,269
	Code Enforcement	58,821
	Street Lighting	123,996
	Gross Cost of Transition Year Services	3,474,062
B.	Revenues	
	Property Tax	\$915,560
	Sales Tax	758,530
	Franchise Fees	51,483
	Fines and Forfeitures	11,300
	Less Transition Year Revenues Received by County	1,736,872
C.	Total County Repayment	(1,737,190)
D.	Annual Repayment for Five Years	\$347,438
	(\$1,737,190 @ 5)	

d. Effective Date and Transition Period

LAFCOs must establish an effective date of incorporation. The effective date is the date upon which the new city is deemed organized or incorporated. During the period between the incorporation election and the effective date, the new city does not have legal standing but the newly elected city council can meet as a city council-elect. These meetings are primarily focused on getting organized for the effective date of incorporation. Activities usually include the planning of the inauguration as a new city, preparing the required legal documents to be adopted by the new city council on its effective date, securing a location to conduct city business and hold city council meetings, hiring of key interim staff, securing of interim insurance coverage and other administrative activities.

All city council-elect meetings are subject to the Brown Act. The legislative intent of the Ralph M. Brown Act is that public agencies conduct their business and make their decisions in open public meetings. Each board, commission, committee, or other body of a local agency created by charter, resolution or formal action of a legislative body is a legislative body itself and is covered by the requirements of the Brown Act. This includes the city council of a newly incorporated city.

On the effective date set by LAFCO (and following a positive vote in the election), the new city council begins to organize the new city's administrative structure at its first meeting by adopting the existing ordinances of the county. These ordinances will remain in full force for at least 120 days following incorporation or until the new city council adopts ordinances superseding the county ordinances, whichever occurs first.

Under State law, the new city does not assume direct responsibility for providing services during the transition period between the effective date of incorporation and July 1 following the effective date. The county and other affected agencies continue to provide municipal level services during the transition period while the new city prepares to take over this responsibility.

Following the transition period, the new city must provide the services that it is authorized to provide. The responsibility for police protection, accident investigation, animal control, land use planning, building and safety, and public streets, among other services, are transferred from the county and other affected agencies to the new city. The new city is then operational in all respects.

To ensure equity between costs and revenues for the county during the transition period, the county can request reimbursement for the net cost of services provided during the transition period ([§57384](#)). If the county requests reimbursement, LAFCO is required to impose it as a term of approval. The new city has up to five years to reimburse the county for the net cost, unless waived by the county (See Exhibit 7, Calculation of County Repayment).

Government Code section ([57384.b](#)) defines net cost of services as:

- The total direct and indirect expenses to the county of providing services [cite the specific section(s) here],
- Adjusted by any subsequent change in the Consumer Price Index, and
- Less any revenues, which the county retains, that was generated from the formerly unincorporated territory during the period of time the services were provided by the county.

e. Review by State Controller

Any interested person or agency may request a review of the CFA by the Office of the State Controller. This request must be made within 30 days from the date that the LAFCO Executive Officer provides notice that the CFA is complete and available for public review ([§56801](#)). The request by an interested person or agency must specify, in writing, any element of the comprehensive fiscal analysis that the State Controller is requested to review and the reasons the State Controller is requested to review each element.

The LAFCO Executive Officer should, in consultation with the State Controller's office, prepare an estimate of the cost of the review and deliver the estimate to the requesting individual or agency. This estimate should include the estimated charge by the State Controller, LAFCO staff costs, and costs for any consultants required to assist the State Controller with the review. The individual or agency requesting the review must deposit the estimated cost of the analysis with the LAFCO Executive Officer.

After a request for review has been made and the appropriate deposit has been submitted to LAFCO, the Executive Officer shall contract with the State Controller for review of the CFA. The contract should specify the elements to be reviewed and the estimated cost of the review. Prior to executing the contract, the parties requesting the review should deposit with the LAFCO Executive Officer, the total estimated cost of conducting the review. If the State Controller identifies a need for an additional deposit prior to executing the contract, the party or parties

A WORD ABOUT FEASIBILITY

There are two "keys" to the feasibility of a proposal for incorporation. The first is financial feasibility. Without the revenue base to provide the services and controls desired by the community, a proposal to incorporate is clearly not feasible. One of the major functions of LAFCO is to make a finding that a proposal is financially feasible.

The other "key" is political feasibility. The final test of this feasibility is, of course, the election. But the political feasibility of a proposal is tested several times during the process.... **From "A Manual for Proponents of Incorporation Proposals", prepared by Christensen & Wallace Management Consultants, Oceanside California 1986*

requesting the review shall be notified and will be responsible for depositing the additional amount with the LAFCO Executive Officer. The State Controller will not proceed with the review until sufficient funds are deposited to cover all costs.

Within 45 days of receiving the CFA ([§56801\(c\)](#)), the State Controller must issue a report to the LAFCO Executive Officer regarding the accuracy and reliability of the information, methodologies, and documentation in the CFA. Time limits imposed upon LAFCO by the Cortese-Knox-Hertzberg Act shall be

tolled while the State Controller conducts its review and prepares its report.

f. Financial Feasibility

LAFCO must make a determination that the proposed city is expected to receive revenues sufficient to provide public services and facilities and ensure reasonable reserves during the three fiscal years following incorporation. Although it is assumed that it is the intention of all new cities to improve services, feasibility is best determined by comparing existing costs, revenues and levels of service to those expected after incorporation.

One of the key issues weighed in the evaluation of incorporation is the proposed city's fiscal feasibility and its impact on neighboring cities and communities. While feasibility ([56038.5](#)) is the threshold for consideration of incorporation, fiscal viability or robustness is generally the measure of greater concern to LAFCO. More fiscally robust cities are more capable of providing municipal services while placing funds in reserve for use by the community at a later date. A city's political impact is directly related to how well it serves its community and how prepared it is financially for any contingency.

B. REVENUE NEUTRALITY

In 1992, the State enacted revenue neutrality legislation designed to reduce the negative fiscal impact incorporations can have on counties and other affected agencies. Under the revenue neutrality law ([§56815](#)) LAFCO cannot approve a proposal for incorporation unless it finds that the amount of revenues the new city receives from the county and affected agencies after incorporation would be substantially equal to the amount of savings the county or the affected agencies would attain from no longer providing services to the proposed incorporation area.

1. Background

During the 1980s, unincorporated communities with high levels of revenue through sales tax and property tax were usually the first to successfully incorporate. The counties were required to provide service free or at reduced cost to the newly incorporated city for up to a year while continuing to operate regional programs benefiting all cities within the county.

When an incorporation occurred, LAFCO was required to split the property tax revenues among affected agencies, essentially by formula. However, because property taxes were constrained after Proposition 13, counties argued that this split resulted in a net loss to them because it did not take into account the continuing cost of countywide services, such as elections, jail operations, social and health services and probation, that still had to be provided. The revenue neutrality law was an attempt to make the tax allocation more equitable by requiring LAFCO to ensure that counties are held harmless from new incorporations. The unintended result was that in the immediate years following enactment of revenue neutrality, only a few incorporations were successful.

A few LAFCOs developed revenue neutrality policies to ensure adequate protection for the county's financial health. These policies attempted to describe parameters for the calculation to determine the prior year's fiscal data as well as the type of method of repayment to the county and the duration of fiscal impacts.

Revenue neutrality has generally removed the financial incentive for communities to incorporate. The revenue windfall is no longer available to new cities. (However, counties may still have strong incentives to facilitate incorporations in order to avoid the long-term costs of providing municipal level services to communities.) Revenue neutrality ensures that counties do not lose more revenues over and above the costs associated with services to be transferred. Thus, if new cities are to be financially feasible, other revenue sources must be obtained to ensure that even existing levels of services are maintained. Counties may negotiate an agreement with the incorporation proponents to ensure a reasonable mitigation payment plan.

The following process is suggested for determining and resolving the issue of revenue neutrality. It is intended to be a model only; individual LAFCOs should either adopted this policy or a revenue neutrality process tailored to unique local conditions. All revenue neutrality policies should be reviewed by legal counsel to ensure compliance with existing law.

2. Revenue Neutrality Process

Implementation of revenue neutrality provisions ([§56815](#)) should ensure adequate protection of the county's financial stability while at the same time permitting the incorporation of communities demonstrating the necessary resources and capacities for self-governance.

The intent of this policy is to:

- Institute a process for analysis and mitigation of revenue neutrality that results in stable, predictable financial outcomes for both the county and the new city.
- Define the terms and budget items to be negotiated under revenue neutrality requirements.
- Mitigate potential fiscal loses to the county without making incorporation impossible or precluding an adequate fiscal base for new cities.
- Specify how participants in the incorporation process can develop proposed terms and conditions of incorporation that will meet revenue neutrality criteria.
- Achieve a revenue neutrality agreement through a rational and predictable process for gathering information, determining the appropriate content of revenue neutrality agreements and providing for the revision of those agreements.

a. General Requirements for Revenue Neutrality

Any proposal that includes incorporation should provide for a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city, and other affected agencies. An incorporation should not occur primarily for financial reasons. LAFCO may not approve a proposal that includes an incorporation unless it finds that the following two quantities are substantially equal ([§56815{b}](#)):

- Revenues currently received by the local agency transferring the affected territory that, but for the operation of revenue neutrality, would accrue to the local agency receiving the affected territory,
- Expenditures, including direct and indirect expenditures, currently made by the local agency transferring the affected territory for those services that will be assumed by the local agency receiving the affected territory.

LAFCO may approve a proposal that includes an incorporation if it finds either of the following:

- The county and all of the subject agencies agree to the proposed transfer ([56815.c](#)), or
- The negative fiscal effect has been adequately mitigated by tax sharing agreements, lump-sum payments, payments over a fixed period of time, or any other terms and conditions pursuant to ([56886](#)).

The terms of revenue neutrality payments, including payment amount(s) and schedule, must be negotiated between the proponents and county officials in accordance with a policy adopted by the local LAFCO. The payments may be in the form of a tax sharing agreement, lump sum payments, payments over a fixed period of time, or any other term and condition such as assumption of debt or contract responsibilities ([§56815.c \(2\)](#)).

Revenue neutrality negotiations are initiated during the preparation of the CFA. After the preliminary results of the CFA are compiled, the county, proponents and LAFCO use the information to structure payments for revenue neutrality that balance the incorporation's feasibility and the losses of net revenue to the county. The negotiated terms of the agreement are then used to create the public hearing draft of the CFA for consideration by LAFCO during the public hearings on incorporation.

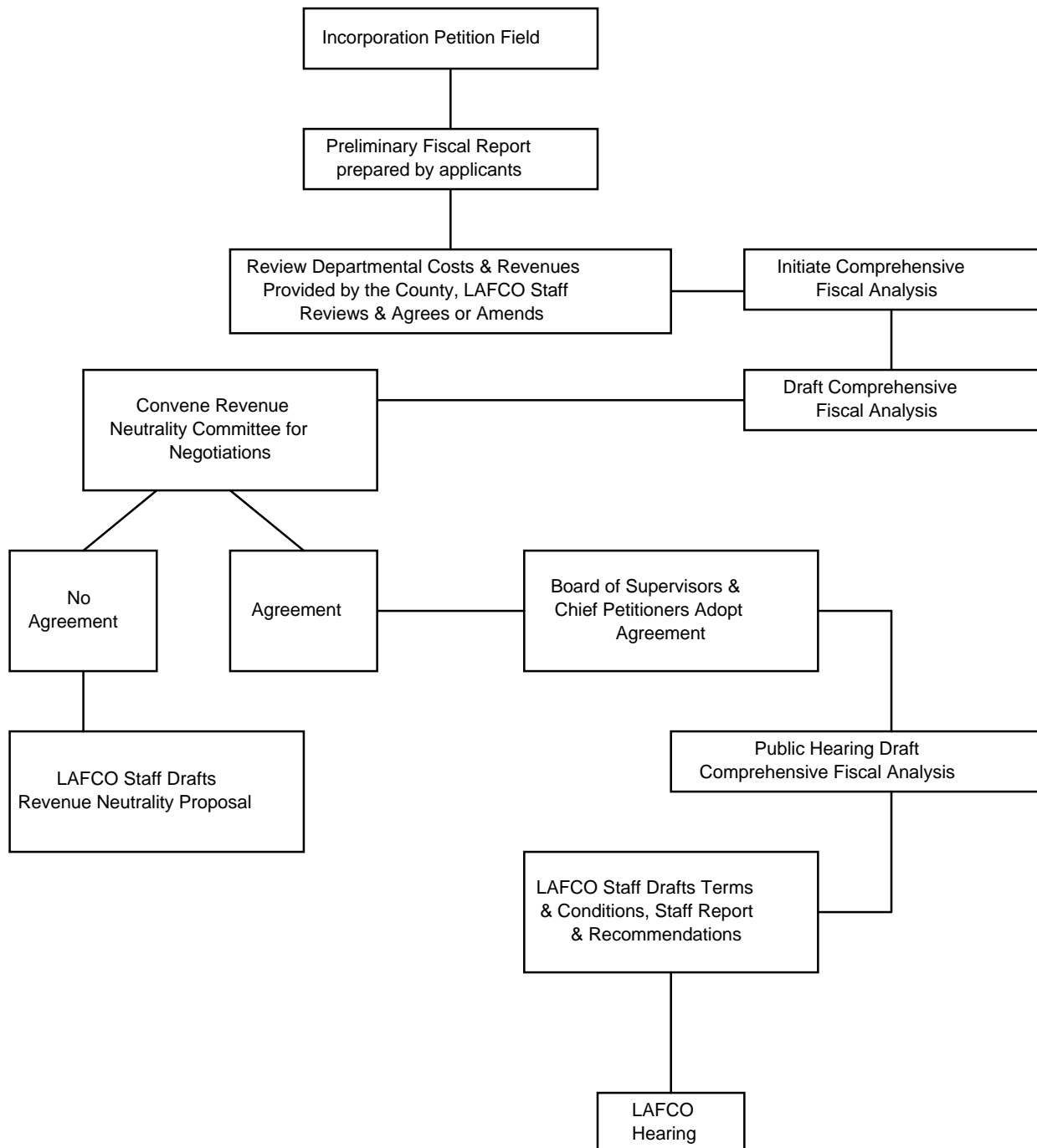
b. Method of Calculation

The calculation of revenue neutrality should be based on the following standards (See Exhibit 8, Calculation of Revenue Neutrality Payment) and agreements should be negotiated pursuant to the following policies:

- Revenue neutrality agreements should be based on county costs and revenues for the most recent prior year for which data are available.

- Only identifiable and recurring revenues and expenditures should be evaluated for purposes of determining revenue neutrality. Anticipated or projected revenue growth should not be included.
- Expenditures for services transferred to a new city should be evaluated on a “net cost” basis. Services funded on a full cost recovery basis (such as building inspection) are by definition revenue neutral and should not be included in the analysis.
- Costs of capital improvements are nonrecurring costs and should not be included in the calculation.

**EXHIBIT 8
REVENUE NEUTRALITY NEGOTIATION
PROCESS**



- Countywide costs for regional services and administrative functions including Chief Administrative Officer, Clerk of the Board, Auditor-Controller, Board of Supervisors and other administrative functions, which are required to support county governance of both incorporated and unincorporated areas, should not be included in defining services transferred to the new city.
- Inflationary factors should not be included in the analysis of revenue neutrality unless the resulting agreement provides for annual adjustment of mitigation payments based on actual data.
- Restricted and unrestricted revenues should be evaluated separately. An agency could pay a portion of its annual revenue neutrality payment with restricted funds if both agencies agree and a legally enforceable mechanism for payment can be created.
- Fees charged by the county for services to other jurisdictions (such as property tax administration fees) should be considered as offsetting county revenue in the calculation of fiscal effects on the county.

c. Negotiation Process

LAFCO staff should, if deemed necessary, convene a revenue neutrality negotiating committee composed of representatives of the county, other affected agencies and the proponents of the proposed incorporation community during preparation of the CFA. The role of the revenue neutrality committee is to develop a mitigation agreement. The role of LAFCO staff in the revenue neutrality process is to facilitate discussions and to ensure compliance with the revenue neutrality policy.

The revenue neutrality committee should negotiate the agreement within 90 days. At the conclusion of the negotiating period, the LAFCO Executive Officer will certify that an agreement has been reached or has not been reached. If an agreement is reached, ratification will be by resolution of the County Board of Supervisors and by letter to the incorporation proponents. The documents demonstrating an agreement to the provisions should be returned to LAFCO staff for inclusion in the comprehensive fiscal analysis, staff report and recommendations to be presented at the public hearing. The terms of the revenue neutrality agreement will also be included as terms and conditions in the LAFCO resolution, if the incorporation is approved. Revenue neutrality agreements should include a description of methodology and assumptions underlying the terms of the agreement.

Agreements that limit revenue neutrality payments should establish the term of payments in the following steps:

- Determine the annual net revenue loss to the county and other affected agencies resulting from the proposed incorporation.

- Determine a lump sum sufficient to yield in interest funds equal to the annual net revenue loss to the county and other affected agencies.
- The duration of mitigation payments will be calculated using the annual mitigation payment amount and inflation and discount rates established by negotiation.
- In instances in which revenue neutrality requires tax sharing or mitigation payments to the county, payment should be effected as directly from the revenue source as permitted by State law.

The effective date of incorporation and the anticipated lead-time for receipt of revenues can also be considered in revenue neutrality agreements. The effective date should be set to establish adequate initial account balances for the new city as it assumes service responsibilities, but should not otherwise conflict with the intent of fiscal neutrality.

Revenue neutrality agreements should also provide for a process of adjustment after incorporation in order to account for unforeseen economic or legislative events significantly affecting the flow of local revenue.

If the negotiating parties do not reach agreement, the status of the negotiations will be referred to LAFCO for discussion of outstanding issues at the first available meeting as determined by the Executive Officer. If revenue neutrality issues are not resolved, LAFCO staff should draft proposed terms and conditions dictating revenue neutrality terms for use in the comprehensive fiscal analysis and for recommendation to LAFCO at its public hearing. (See Exhibit 9, Revenue Neutrality Negotiation Process)

d. Terms and Conditions

Terms and conditions for implementation of revenue neutrality may include provisions for tax sharing agreements, lump-sum payments, payments over a fixed period of time, modification of incorporation boundaries or any other terms and conditions permitted [\(56815\)](#).

The term of mitigation payments may be either ongoing or limited to a specific number of years. Revenue neutrality agreements that provide for ongoing payments may provide for the permanent sharing of revenues between the new city and affected agencies if agreed to by the parties involved and if a means of adjustment after incorporation is included. Any terms and conditions that mitigate the negative fiscal effect of a proposal that contains incorporation shall be included in the LAFCO resolution.

EXHIBIT 9
EXAMPLE
CALCULATION OF REVENUE NEUTRALITY PAYMENT
REVENUE NEUTRALITY – GENERAL FUND FY 2000-01

Revenues Transferred

Property Taxes	\$915,560
Sales Tax	2,916,300
Real Property Transfer Tax	111,425
Franchise Fees	582,339
Total Revenues Transferred	\$4,525,624

Expenses (Net of Rev. Offsets)

Sheriff Department	\$2,929,347
Animal Control	74,480
Code Enforcement	53,829
Street Lighting	116,878
Total Expenses Transferred	\$3,174,534

Additional Future Revenues to County (Property Tax Administration Fees, .25%)	2,289
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County Surplus or (Deficit)	(\$1,348,800)
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C. CEQA

Incorporations are projects subject to the California Environmental Quality Act (CEQA) and require environmental review ([CEQA Guidelines Section 15378](#)). LAFCO, as the lead agency for the environmental review, must prepare the required documentation and may charge the incorporation proponent (the applicant) fees to cover costs. The environmental documentation must address the possible environmental impacts resulting from the incorporation but do not need to speculate on impacts which may result from future city council actions. The timing of the environmental review is critical to incorporation and should be started as soon as possible after submittal of the incorporation application.

LAFCO may make one of three environmental determinations:

- The incorporation is exempt under [§15320](#) of the CEQA Guidelines. A notice of exemption should be filed with the County Clerk upon approval of the incorporation.
- The incorporation does not have the potential to result in significant environmental impacts, based on an initial study. If an initial study shows no substantial evidence that the project may result in significant adverse environmental impacts, the LAFCO may prepare and adopt a negative declaration. A notice of determination must be filed with the County Clerk upon adoption of the negative declaration and approval of the incorporation.
- The incorporation has the potential to result in significant environmental impacts, based on an initial study. If the initial study shows no substantial evidence that the project may result in significant adverse environmental impacts, the preparation of an environmental impact report (EIR) is required. A notice of determination must be filed with the County Clerk upon certification of the final EIR and approval of the incorporation.

D. EXECUTIVE OFFICER'S REPORT AND RECOMMENDATION

1. Statutory Requirements

The LAFCO Executive Officer must prepare a final report on the incorporation application with recommendations to approve or disapprove the incorporation. The Executive Officer's report must address, but not be limited to, the following sections:

- Incorporation Boundaries--LAFCO must consider alternatives to the proposed incorporation boundaries and may also establish a sphere of influence. ([§56375](#)).
- Plan for Services.
- Comprehensive Fiscal Analysis.

- Terms and Conditions.

The LAFCO staff report must also include the following findings:

- The proposed incorporation is consistent with the intent of the Cortese-Knox-Hertzberg Act.
- The incorporation is consistent with the spheres of influence of affected agencies.
- The comprehensive fiscal analysis and the controller's report, if prepared, have been reviewed.
- The proposed city is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation.
- Environmental Determination.
- Terms and Conditions.

LAFCO may specify terms and conditions ([§56886](#)) which may include, but are not limited to, the following:

- Continuation of services following incorporation.
- Payments and taxes required by changes in service responsibilities or for revenue neutrality.
- Disposition of money, property and rights of use, such as water or utility capacity rights.
- Disposition of special district responsibilities, district governing boards and employees.
- The effective date of incorporation.

VI. HOLDING THE PUBLIC HEARING

A. GENERAL INFORMATION

When an application for incorporation is deemed complete, the LAFCO Executive Officer will issue a certificate of filing, with a copy to the proponents ([§56651](#)), specifying the date of the first LAFCO hearing on the proposal. The public hearing must be set within 90 days of the issuance of the certificate of filing. All meetings must meet the legal requirements for public notice. Notice of the hearing will be sent to the proponents, the county, affected agencies and those requesting a mailed notice in writing. Notice must also be given in the following manner:

- Notice given in electronic format on LAFCO's website ([§56150](#))

- Notice posted on or near the doors of the meeting room ([§56158](#))
- Notice must be posted at least 21 days prior to the date of the hearing ([§56159](#))
- Notice published in one or more newspapers of general circulation ([§56153](#))
- Notice must be published at least 21 days prior to the date of the hearing ([§56154](#))

WHY WASN'T I NOTIFIED?

LAFCO is NOT required to mail a notice to all residents living within the incorporation boundaries. Residents may request, in writing, to be placed on the appropriate mailing list for notices of incorporation hearings and/or distribution of incorporation reports. LAFCO may charge for distribution of incorporation reports or notices.

Due to the sensitive and often controversial nature of incorporations, multiple public hearings may be held. It is recommended that LAFCOs hold the initial public hearing in the community proposing incorporation to allow residents a convenient opportunity to provide input. At the public hearing, any person wishing to testify will be given that opportunity, although the LAFCO Commission may set guidelines for the length and order of testimony.

The LAFCO hearing process may be continued but may not be postponed more than 70 days from the date specified in the original public hearing notice. Prior to any continuance of the incorporation hearing, LAFCO must give the proponents an opportunity to address any potential impacts or hardships on the incorporation effort that may result from a delay. The Commission must consider the potential impacts on the incorporation proponents prior to making a decision on the duration of any continuance ([§56666{c}](#)).

B. CONFLICTING PROPOSALS

If two or more proposals pending before LAFCO conflict or are in any way inconsistent with one another (as determined by LAFCO), LAFCO may determine the relative priority for hearing the proposals ([§56655](#)). However, in the absence of a determination by LAFCO, priority is given to the proposal first filed with LAFCO.

C. COMMISSION ACTIONS

At the conclusion of the public hearing, LAFCO may approve, amend and approve, or deny the proposed incorporation ([§56375](#)). If LAFCO approves the incorporation proposal, the Commission's action must include a series of findings and determinations specifically addressing incorporation issues in the language of the resolution of approval including, but not limited to, the following:

- Revenue Neutrality.
- Modification of Incorporation Boundaries.
- Acceptance or Rejection of Findings.

- Terms and Conditions.
- Environmental Determination.
- Property Tax Determination.
- Provisional Appropriations Limit.

The Commission must also adopt a resolution of determination within 35 days of the close of the public hearing. If the proposal is denied, no similar proposal for incorporation involving the same or substantially the same area shall be initiated for at least one year after the date of adoption of the resolution terminating proceedings ([§56884](#)).

D. REQUEST FOR RECONSIDERATION

Any person or affected agency may file a written request with the LAFCO Executive Officer requesting reconsideration of any resolution approving incorporation. The request must comply with the provisions of [56895](#) and policies adopted by the LAFCO. There may be a fee for filing the reconsideration request.

The request must state the specific change requested and what new or different facts or applicable new law warrant the reconsideration. The request must be filed within 30 days of the adoption of a resolution by LAFCO.

If LAFCO receives a request for reconsideration, it shall not take any further action on the incorporation proposal until the LAFCO Commission acts on the request. The Executive Officer must place the request on the agenda of the next LAFCO hearing to receive oral or written testimony. The hearing may be continued from time to time but the continuance shall not exceed 35 days from the date in the public hearing notice. The person or agency that filed the request may withdraw it at any time prior to the conclusion of the LAFCO hearing.

At the conclusion of its consideration, the LAFCO Commission may approve or disapprove with or without amendment, wholly, partially, or conditionally, the request. The determination of LAFCO is final and conclusive. No person or agency shall make any further request for the same change or a substantially similar change, as determined by LAFCO. Clerical errors or mistakes may be corrected pursuant to Section [56883](#).

VII. CONDUCTING AUTHORITY HEARING

LAFCO is designated by law as the "conducting authority" for city incorporations. A conducting authority has the responsibility to hold a public hearing to count protest received for an incorporation proposal. The LAFCO Commission may perform this function or may delegate its conducting authority function to the LAFCO Executive Officer ([57000.c](#)).

Within 35 days of LAFCO's adoption of its resolution of approval ([§57002](#)), LAFCO issues a "Notice of Hearing" scheduling the date for the Conducting Authority hearing on the incorporation proposal. The notice ([§57025](#)) is published in a newspaper of general circulation in the incorporating area. The proponents (and others requesting notice) also receive the notice by mail.

The purpose of the hearing is to collect and count written protest from registered voters residing within the incorporation area. LAFCO, acting as the conducting authority, does not have the discretion to modify the incorporation proposal or to terminate incorporation proceedings without sufficient protest being recorded. The LAFCO conducting authority hearing must take place not less than 15 days from the date the notice was issued but may be continued for up to 60 days.

Written protest submitted at the conducting authority hearing will be verified and tabulated, and LAFCO will take one of the following actions ([§57077](#)) within 30 days of the conclusion of the hearing:

- Terminate the proceedings if more than 50% of the registered voters residing in the incorporation area submit written protest ([§57078](#)); or
- Call an election on the question of incorporation if written protest is submitted by less than 50% of registered voters residing in the incorporation area.

Following the protest determination, the County Registrar of Voters begins the process of preparing the incorporation for a vote at the next general election unless a special election is requested and approved by LAFCO. If proceedings are terminated by majority protest or by the voters, no substantially similar proposal for the same territory may be filed within two years of the date of adoption of the resolution terminating proceedings ([§57090](#)).

VIII. VOTING: THE INCORPORATION ELECTION

Elections for incorporation are usually on the ballot of the next general election. Incorporation elections are considered county elections for the purpose of administering the Election Code and the Political Reform Act. If a special election is requested, the incorporation proponents may be required to pay for the costs of the special election. If the incorporation is successful, the new city will be liable for payment of election costs ([§57150{b}](#)). In the event the issue fails, the county absorbs the election costs.

The LAFCO Executive Officer must draft an impartial analysis ([§56898](#)) of the incorporation issue for inclusion in the incorporation ballot. The Commission may review the text of the impartial analysis and approve or modify it, if the Commission has instituted a review procedure. The review must be completed in sufficient time to consider and approve or modify the analysis and submit the analysis to the officials conducting the election not later than the last day for submitting rebuttal arguments.

IX. FINISHING UP: COMPLETION OF THE INCORPORATION

Following a successful incorporation election, the County Board of Supervisors will certify the election results by adoption of a resolution and forward a copy to LAFCO. LAFCO staff will prepare a "Certificate of Completion", which signals the end of the incorporation process ([§57178](#)). The effective date of the new city will be clearly shown on these documents. LAFCO staff will assemble documents to accompany the Certificate of Completion for recordation by the County Recorder's office.

X. POST INCORPORATION

After incorporation, LAFCO's work is complete. However, the work of the new city has just begun. It is recommended that all new cities contact the League of California Cities which offers several publications, classes and workshops for new city councils. It is also recommended that all LAFCOs obtain a copy of the League of California Cities publication, "A Guide For New Incorporated Cities" (March 1986) for distribution to newly incorporated city councils.

League of California Cities

It may seem for a brief moment after the incorporation results certify the creation of your new city that the hard work is over. Fortunately, it has just begun—fortunately because shepherding a new city through its formative stages is a rewarding and exciting endeavor, one that will shape the character and direction of the city for years to come. The purpose of this publication is to make this process easier by providing practical advice and guidance to new city officials as to what must typically be accomplished during the periods immediately prior to and following the first council meeting. Newly elected officials in a new city often feel somewhat at a loss as to what to do immediately following the election; this manual is intended to provide pragmatic step-by-step assistance so that new officials can devote their time not to trying to reinvent the wheel, but to consideration of the important issues facing them.... It is critical that council members have a basic understanding of conflict of interest laws...After the city is officially incorporated, all meetings of the city council are to be open and public in accordance with the Brown Act...Action of a city council can be taken only at duly convened public council meetings, at a place designated by ordinance...before the city can undertake to approve any discretionary project, it must review the possible environmental impact of the project pursuant to the California Environmental Quality Act.....

From "A Guide For New Incorporated Cities" League of California Cities, March 1986.

XI. APPENDICES (provided under a separate cover)